



JUDICIAL INVESTIGATION COMMISSION

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March 10, 2000

JIC Advisory Opinion 2000-11

Dear Magistrate :

You recently asked for an advisory opinion from the Judicial Investigation Commission. Your request for the advisory opinion was reviewed by the Commission at its recent meeting. In your letter you stated that your daughter is a current candidate for County Prosecuting Attorney and you are a candidate for reelection as Magistrate. You asked whether if you are both successful in the election you can hear any case in which the prosecuting attorney's office appears in your court.

To answer the inquiry which you have raised the Commission reviewed Canon 3E of the Code of Judicial Conduct which states in relevant part:

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

E. Disqualification. - (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

- (d) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (ii) is acting as a lawyer in the proceeding; . . .

In reviewing this section of the Code of Judicial Conduct, the Commission realized that the prosecuting attorney in a county has a statutory duty to attend to the criminal business of the state in the county in which he or she is elected and qualified and when he or she has information of the violation of any penal law committed within such county he or she shall institute and prosecute all necessary and proper proceedings against the offender. See W. Va. Code § 7-4-1.

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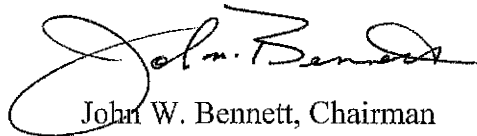
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The prosecuting attorney may appoint practicing attorneys to assist him or her in the discharge of his or her official duties during the term of office. Any attorney so appointed shall be classified as an assistant prosecuting attorney and shall take the same oath and may perform the same duties as his principal. Each assistant shall serve at the will and pleasure of his principal and may be removed from office by the circuit court of the county to which he or she is appointed for any cause for which his or her principal might be removed. See, W.Va. Code § 7-7-8.

Based upon the statutory duties placed on a prosecuting attorney it is the opinion of the Commission that you would be disqualified in all proceedings involving cases represented by any lawyer in the prosecuting attorney's office. An assistant prosecuting attorney serves as an extension of the duly elected prosecuting attorney whose statutory responsibility is to attend to the criminal business of the state and county in which he or she is elected and qualified.

It is hoped that the opinion addresses fully the question which you have raised. If there is any further question regarding this matter do not hesitate the Commission.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John W. Bennett".

John W. Bennett, Chairman

JWB:nb